

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re:

CASE NO. 00-23702

ROBERT F. BRILL and  
JEANANN BRILL,

Debtors.

DECISION & ORDER

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ROBERT F. BRILL and  
JEANANN BRILL,

Plaintiffs,

V.

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UMLICVP, LLC.,

Defendants.

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**BACKGROUND**

On December 13, 2000, Robert F. Brill ("Brill") and Jeanann Brill (collectively, the "Debtors") filed a petition initiating a Chapter 7 case. On December 26, 2000, the Debtors filed the Schedules and Statements required to be filed by Section 521 and Rule 1007, which indicated that: (1) they owned no office equipment, machinery or equipment used in a business; (2) they had joint unpaid income taxes due of in excess of \$72,000.00, and Jeanann Brill was liable for unpaid federal withholding taxes of in excess of \$113,000.00; (3) they were indebted to UMLICVP, LLC., ("United Mortgage") for \$150,000.00, as

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guarantors of a loan; (4) their only other unsecured indebtedness was a \$4,000.00 medical bill; and (5) Brill was the sole shareholder of Selectronics Robotics, Inc. ("Robotics") and Jeanann Brill was the sole shareholder of Selectronics Brokerage, Inc. ("Brokerage").

On January 12, 2001, Brokerage filed a voluntary petition initiating a Chapter 11 case. On its Schedules and Statements, Brokerage indicated that it had office equipment, furnishings and supplies valued at \$10,000.00, but no machinery, fixtures or equipment used in its business.

On April 3, 2001, the Debtors filed a motion (the "Conversion Motion"), which requested that their case be converted to a Chapter 13 case. The Motion was opposed by United Mortgage. In its opposition to the Conversion Motion, United Mortgage alleged that: (1) on March 2, 1993, Brokerage, by its president Jeanann Brill, executed and delivered to the United States Small Business Administration (the "SBA") a note in connection with a \$150,000.00 loan (the "SBA Loan"), which was: (a) guaranteed by each of the Debtors; (b) secured by a security interest in all of the equipment, machinery, inventory and accounts receivable of Brokerage; (c) assigned to United Mortgage on January 3, 2000; and (d) in default with a current

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balance due of \$125,888.31; (2) on December 21, 2000, United Mortgage commenced a state court action in connection with the SBA Loan; and (3) the Debtors filed their bankruptcy petition in bad faith, and their desire to convert their case to a Chapter 13 case was also in bad faith, because: (a) on their Schedules and Statements the Debtors: (i) failed to disclose a \$300,000.00 debt due from Brokerage to Jeanann Brill; (ii) undervalued their 1972 Porsche and a trailer; and (iii) understated their income and overstated their expenses; (b) on its Schedules and Statements, Brokerage indicated that it did not own any machinery and equipment, so that Jeanann Brill, as its sole shareholder, must have transferred the machinery and equipment that was collateral for the SBA Loan without the consent of the SBA or United Mortgage, in violation of the terms of the security agreement (the "Security Agreement") executed and delivered in connection with the SBA Loan; (c) on their Schedules and Statements and at their Meeting of Creditors, the Debtors failed to fully disclose the interrelationships among the various corporate and business entities in which they had an interest, including Brokerage, Robotics, LockGun.com, Inc. ("LockGun"), and Development Technologies, Inc. ("Development"); and (d) the machinery and equipment previously owned by

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Brokerage and valued by United Mortgage at approximately \$300,000.00, had either disappeared without a sufficient explanation from the Debtors, or, it had been shuffled by the Debtors among the various business entities in which they had an interest.

At a June 29, 2001 hearing on the Conversion Motion, at which Robert Brill testified, it was established that: (1) United Mortgage had conducted a 2004 Examination of the Debtors; (2) United Mortgage had a three-page list of machinery and equipment (the "Equipment List") which it believed was attached to the Security Agreement at the SBA Loan closing and that the Debtors had represented to the SBA that the machinery and equipment was owned by Brokerage; and (3) at his 2004 Examination, Robert Brill asserted that: (a) some of the machinery and equipment on the Equipment List was never owned by Brokerage, but was owned by Trinity Tool & Die, Inc. ("Trinity"), a corporation owned by him and his father that ceased business operations prior to the closing of the SBA Loan; and (b) the machinery and equipment previously owned by Trinity had been transferred to Development, a company wholly owned by Brill.

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At the hearing on the Conversion Motion, Brill testified that: (1) he never prepared the Equipment List or delivered it to the SBA; (2) the Equipment List may have been prepared by one of the sales managers at Brokerage to show various machinery and equipment items located at the Brokerage business premises that Brokerage had the ability to sell to interested buyers; and (3) the machinery and equipment owned by Trinity that was included on the Equipment List was not the type of machinery and equipment used by Brokerage in its business.

At the hearing on the Conversion Motion, the attorney for the Debtors noted that: (1) the Security Agreement did not refer to the Equipment List or specifically indicate that it was attached; (2) there was no direct evidence that the Equipment List was attached to the Security Agreement at the time of the SBA Loan closing; and (3) there was no direct evidence that the Debtors: (a) prepared or delivered the Equipment List to the SBA; or (b) made any representations to the SBA about the Equipment List.

On July 15, 2001, the Court entered an Order permitting the conversion of the Debtors' Chapter 7 case to a Chapter 13 case. However, on October 26, 2001, the Debtors' case was reconverted to a Chapter 7 case.

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On June 26, 2001, prior to the conversion of the Debtors' Chapter 7 case to a Chapter 13 case, the Debtors filed an adversary proceeding (the "Adversary Proceeding") against United Mortgage, which requested that the court determine that United Mortgage did not have a security interest in any personal property owned by the Debtors. In their Complaint, the Debtors: (1) confirmed that in connection with the SBA Loan the Debtors had individually executed UCC-1 Financing Statements, prepared by the SBA, which were later filed by the SBA with the Chemung County Clerk and the New York State Secretary of State; (2) asserted that they were never asked to, nor did they execute and deliver, a security agreement in connection with the SBA Loan or their guarantees of the loan; and (3) asserted that a UCC-1 Financing Statement itself did not constitute the security agreement required by the Uniform Commercial Code to create a valid security interest.

On July 31, 2001, United Mortgage filed an Answer and Counterclaim in the Adversary Proceeding. The United Mortgage Counterclaim alleged that: (1) on or about December 1992, Brokerage applied for the SBA Loan and represented that it owned equipment worth at least \$150,000.00; (2) in connection with the SBA Loan, Brokerage was required to provide a list of equipment,

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which United Mortgage asserted was the Equipment List, consisting of a two-page list labeled, "Selectronics Brokerage Company Machinery & Equipment, 31 December 1992 Inventory," and a one-page list entitled, "Equipment Necessary for Assembly, Consisting of Equipment to be Purchased, Equipment-On-Hand and Equipment to be Purchased & Billed"; (3) Brill had represented to the SBA that none of the machinery and equipment on the Equipment List was owned by Trinity, since all of its machinery and equipment had been sold; (4) at his 2004 Examination, Brill testified that some of the machinery and equipment on the Equipment List was owned by Trinity; (5) if all of the machinery and equipment on the Equipment List was not owned by Brokerage at the time of the SBA Loan closing, as it had been represented to be, the SBA Loan was obtained by fraud and the amounts due on the SBA Loan from the Debtors, as guarantors, should be determined by the Court to be nondischargeable pursuant to Section 523(a)(2)(A).

After the Debtors denied the allegations in the United Mortgage Counterclaim, and their Chapter 13 case was reconverted to Chapter 7, on May 9, 2002 and August 30, 2002, the Court conducted a trial in the Adversary Proceeding. The following individuals testified at the trial: (1) Robert Brill; (2)

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Jeanann Brill; (3) Brian Quailey, a loan officer of the SBA, who originated the SBA Loan; and (4) Ann Teeter, a former attorney for the SBA who closed the SBA Loan.

Jeanann Brill testified at trial that: (1) she was the sole shareholder of Brokerage; (2) she did not prepare the Equipment List or know who prepared it; (3) the machinery and equipment set forth on the first two pages of the Equipment List was not the type of equipment that Brokerage at the time of the SBA Loan closing used in connection with its business; and (4) she had no recollection as to whether the Equipment List was attached to the Security Agreement at the time of the SBA Loan closing when she executed and delivered the Agreement as the President of Brokerage.

Brill testified at trial that: (1) he did not prepare the Equipment List or know who prepared it; and (2) most of the machinery and equipment listed on the first two pages of the Equipment List was equipment formerly owned by Trinity, which was never transferred to Brokerage or otherwise owned by it.

Brian Quailey testified at trial that: (1) he was not involved in the SBA Loan closing or the preparation of any of the paperwork for the Loan closing; (2) he did not know how the SBA Loan was transformed from a \$150,000.00 loan intended to

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provide the funds necessary for the business to acquire and improve certain real property, to a non real estate-based loan, secured only by personal property assets, intended to provide the funds necessary for the business to acquire additional machinery and equipment, or why a new loan authorization to evidence this transformation had not been prepared in consultation with him as the originating loan officer; and (3) the SBA would not have closed the Veteran's-based SBA Loan if, at the time of closing, it knew that Brill, who was a veteran, was not at least the majority shareholder of Brokerage.

Ann Teeter testified at trial that: (1) she had retired from the SBA; (2) she had no recollection or memory of the SBA Loan closing; (3) contrary to her testimony at a pretrial deposition, she did not traditionally, as a matter of practice when closing SBA loans, attach equipment lists to security agreements, since the SBA relied upon the blanket boilerplate collateralization language contained in its security agreements and financing statements; (4) equipment lists were generally obtained by the SBA as a tool to locate and account for collateral if a loan went into default; (5) the handwriting on the first page of the Equipment List, which read, "equipment used index - - estimated @ \$300.0 all Selectronics - not transferred from Trinity any

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from Trinity has been sold," was hers, but she had no recollection as to when or why those notes were made, or when or how she obtained the information she set forth on the notes; (6) she had no recollection as to whether the Equipment List was attached to the Security Agreement at the time of the SBA Loan closing; (7) she had no recollection that any specific representations were made to her, as the only representative of the SBA at the SBA Loan closing, as to the ownership by Brokerage of any particular item of machinery or equipment; (8) she had no specific recollection of a December 14, 1992 letter written by her to Brill in connection with the SBA Loan which required an itemized listing of business equipment owned by Brokerage as well as a lien search against Trinity, Brokerage, Brill and Jeanann Brill; and (9) she had no specific recollection as to why: (a) the UCC-1 financing statements executed in connection with the SBA Loan, which were pre-filed before the closing, included the Debtors; or (b) no security agreement was prepared and executed by the Debtors in connection with the SBA Loan closing.

## **DISCUSSION**

### **I. Statute and Case Law**

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A creditor seeking to have a debt declared nondischargeable under Section 523(a)(2)(A)<sup>1</sup> for a false representation must prove by a preponderance of the evidence that: (1) the debtor made a representation; (2) knowing the representation was false; (3) with the intent to deceive the creditor; (4) upon which the creditor actually and justifiably relied; and (5) the creditor sustained a loss as a proximate result of its reliance upon the representation. *See Bank of America v. Jarczyk*, 268 B.R. 17, 21 (W.D.N.Y. 2001).

## II. Summary of Decision

### A. Ownership of Selectronics Brokerage, Inc.

United Mortgage has failed to meet its burden to prove by a preponderance of evidence that: (1) after Brill applied to the SBA for a loan for Selectronics Brokerage Company and the

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<sup>1</sup> Section 523(a)(2)(A) provides that:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by -

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition[.]

11 U.S.C. § 523 (2002).

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business apparently was incorporated that: (a) either of Debtors represented to the SBA that Jeanann Brill was not the sole shareholder of Brokerage; (b) any representative of the SBA ever specifically inquired as to the ownership of Brokerage; or (c) the Debtors knew that after Brill had applied for the SBA Loan as a veteran, a change in the ownership of the business after its incorporation, or otherwise, would have made Brokerage ineligible for the Loan; or (2) any loss sustained by United Mortgage is or will be the proximate result of the SBA's reliance upon a false representation that Brill was the owner of at least fifty-one percent (51%) of Brokerage at the time of the SBA Loan closing.

**B. Machinery and Equipment Collateral**

United Mortgage has failed to meet its burden to prove by a preponderance of the evidence that: (1) either of the Debtors specifically represented to the SBA that each and every item of machinery and equipment set forth on pages one and two of the Equipment List was owned by Brokerage and would be collateral for the SBA Loan by reason of the execution of the Security Agreement and the pre-filed SBA UCC-1 financing statements; or (2) the SBA actually relied in making and closing the SBA Loan upon a representation by either of the Debtors that each and

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every item of machinery and equipment set forth on pages one and two of the Equipment List would be collateral for the SBA Loan. On this issue, United Mortgage failed to provide any evidence as to: (1) how the SBA Loan was transformed from a real estate-based mortgage loan to a loan secured only by personal property; or (2) what specific machinery and equipment collateral the SBA actually relied upon in approving and closing the transformed SBA Loan.

**C. Overview**

In a criminal trial, a not guilty verdict is not necessarily a determination that the defendant is innocent. At times it is only a determination that the prosecution has not met its burden of proof. In this case, it may be, as alleged, that either or both of the Debtors made knowingly false representations with respect to the ownership of Brokerage and of the machinery and equipment set forth on pages one and two of the Equipment List with the intent to deceive the SBA. However, United Mortgage has not proved by a preponderance of the documentary and testimonial evidence that those misrepresentations were made, or that, if made, the SBA actually and justifiably relied upon them in making and closing the SBA Loan.

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Furthermore, since: (1) the ownership of Brokerage between Brill and Jeanann Brill, as husband and wife, could have been changed at any time with no tax consequences; and (2) neither the conditions for closing the SBA Loan nor the final Loan documentation itself required the machinery and equipment set forth on pages one and two of the Equipment List to be pledged as collateral if it was not owned by Brokerage (for example there were no debt to equity covenants), there does not appear to be any reason for the Debtors to have misrepresented the ownership of Brokerage or the machinery and equipment in question.

### **III. Ownership of Selectronics Brokerage, Inc.**

United Mortgage has asserted that the Debtors or either of them knowingly misrepresented to the SBA that Brill was at least a majority shareholder of Brokerage and that the SBA Loan could not and would not have closed had the SBA known that Jeanann Brill was the sole shareholder of Brokerage.

On October 19, 1991, Brill and Jeanann Brill executed an SBA Application for Business Loan (the "Application").<sup>2</sup> The Application indicated that: (1) Brill was the applicant; (2) the

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<sup>2</sup> The Application was admitted as Exhibit "U" at trial.

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name of the business that the loan proceeds were to be used for was Selectronics Brokerage Company; (3) the proceeds of the loan were for land acquisition in the amount of \$110,000.00 and new construction, expansion or repair in the amount of \$40,000.00; (4) Brill, who owned fifty-one percent (51%) of the business, was in military service from October 1966 through October 1969; (5) Jeanann Brill owned forty-nine percent (49%) of the business; (6) the military service information was being collected for statistical purposes only, and had no bearing on the credit decision to approve or decline the loan; (7) Jeanann Brill was the president of the business; and (8) the business, its owners, or majority stockholders had a controlling interest in Trinity, which was inactive.

Nothing in the Application indicated that the loan applied for would be conditioned upon Brill, as a veteran, being the owner of at least a majority interest in the business at the time of the closing of the loan if it were approved.

By a letter from Ann Teeter, dated December 14, 1992, addressed to Brill, which referenced Brokerage rather than Selectronics Brokerage Company (the "Teeter Letter"),<sup>3</sup> Brill was

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<sup>3</sup> The Teeter Letter was admitted as Exhibit "R" at trial.

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advised that his application for a loan in the amount of \$150,000.00 had been approved. The Letter indicated that the conditions for the disbursement of the loan were as set forth in an enclosed authorization (the "Authorization").<sup>4</sup>

The Authorization is addressed to Brokerage, which indicates that the SBA knew the business had become a corporation, or at least that the business name had changed. Nevertheless, the disbursement conditions as set forth in the Authorization did not: (1) provide that Brill, as a veteran, must be a majority shareholder of the business at the time of closing; or (2) require a clarification of the business ownership which has changed its name and perhaps its legal status.

There has been no evidence produced in the Adversary Proceeding which indicates that: (1) notwithstanding the name change, the SBA ever inquired as to whether the Debtors' ownership in Brokerage was the same as in Selectronics Brokerage Company; or (2) the ownership of the business was a material condition to closing the SBA Loan, given that: (a) Brill was a guarantor of the SBA Loan; (b) Brill was involved in the

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<sup>4</sup> The Authorization was admitted as Exhibit "V" at trial.

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operations of the business; and (c) Brill's spouse was the sole shareholder owner of the corporation.

In addition, there has been no evidence produced in the Adversary Proceeding which indicates that, if at the time of the SBA Loan closing the Debtors had been advised that a necessary condition to the disbursement of the Loan proceeds was that Brill be at least a majority shareholder of Brokerage, the Debtors would not have immediately transferred the necessary shares to Brill, which could have been accomplished without any negative tax consequences between them because they are husband and wife.

Furthermore, there has been no evidence produced in the Adversary Proceeding which indicates that the proximate cause of any loss which has or may be sustained by United Mortgage is the result of the fact that at the time of the SBA Loan closing Brill, who guaranteed the SBA Loan, was not at least a majority shareholder of Brokerage.

In summary, the SBA has failed to meet its burden to prove that: (1) there was a misrepresentation made by either or both of the Debtors as to the ownership of Brokerage; (2) any such misrepresentation, if made, was knowingly made with the intent to deceive the SBA; or (3) the SBA in closing the SBA Loan

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actually and justifiably relied on a misrepresentation that Brill was at least the majority shareholder of Brokerage.

**IV. Machinery and Equipment Collateral**

United Mortgage has asserted that the Debtors, or either of them, as a principal or guarantor of Brokerage, obtained the SBA Loan by false pretenses, false representations or actual fraud, because it was represented to the SBA that all of the items of machinery and equipment set forth on pages one and two of the Equipment List were owned by Brokerage and would be collateral for the SBA Loan, when they knew that: (1) the vast majority of that machinery and equipment was owned by Trinity, Brill or his father; and (2) the SBA was relying on having a security interest in that machinery and equipment when it made the SBA Loan.

Item 10 of the Authorization provided that:

Prior to disbursement, borrower to provide lender a complete list of personalty on which SBA will hold lien. List must be signed by borrower, with values affixed, and is to be updated periodically as to after acquired property covered by SBA lien.

Item 15 of the Authorization provided that:

Prior to disbursement, SBA is to be in receipt of evidence that Robert F. Brill/borrower has injected not less than a total of \$180,000.00 in the form of cash in the amount of \$70,000.00 and machinery and equipment in the amount of \$110,000.00, into the

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business, either as capital or as a loan, subject to standby NSBA Form 155.

The Teeter Letter required an "[i]temized listing of business equipment now owned" before a closing would be set, but not as a condition to disbursement. "Major items should include make, model number and serial number."

Although pages one and two of the Equipment List appear to comply with the requirements of the Teeter Letter, in that they set forth make, model and serial numbers, they do not comply with the conditions for disbursement set forth in Item 10 of the Authorization, in that they: (1) have no values assigned to each item of machinery and equipment; (2) are not signed or initialed by the borrower;<sup>5</sup> and (3) are not the type of machinery and equipment that Brokerage used in its business operations.

Although the Equipment on Hand portion of page three of the Equipment List does not comply with the Teeter Letter, because it does not set forth make, model and serial numbers, it appears to substantially comply with the conditions for disbursement set forth in Item 15 of the Application, in that it: (1) is signed by Roger Scalia, an employee of Brokerage; (2) sets forth

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<sup>5</sup> Pages one and two of the Equipment List are not clearly a three page list including page three, which was signed on behalf of Brokerage.

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individual values; and (3) is within \$5,000.00 of the \$110,000.00 value of machinery and equipment required.

Each of the Debtors testified at trial that they: (1) had not prepared the Equipment List; (2) had no recollection of the Equipment List being present at the time of SBA Loan closing or being attached to the Security Agreement; and (3) had not seen the Equipment List prior to the commencement of their bankruptcy case and the litigation which is the subject of this Adversary Proceeding. Ann Teeter testified at trial that: (1) she had no recollection of the SBA Loan closing; (2) she had no recollection of the Equipment List, or whether it was attached to the Security Agreement at the time of the SBA Loan closing; (3) the handwriting on the first page of the Equipment List was hers, but she had no recollection of when it may have been written on the List, or upon what information it was based; and (4) she could not state that either of the Debtors made any representations to her or anyone else at the SBA regarding what machinery and equipment was owned by Brokerage at the time of the SBA Loan closing.

United Mortgage asserts that the following evidence which it has produced demonstrates by the necessary preponderance of the evidence that Brill, Jeanann Brill or both of them,

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knowingly misrepresented to the SBA that: (1) Brokerage owned all of the equipment on pages one and two of the Equipment List; and (2) that machinery and equipment would be collateral for the SBA Loan by reason of the execution and delivery of the Security Agreement: (1) pages one and two of the Equipment List are labeled, "Selectronics Brokerage Company - Machinery and Equipment - 31 December 1992 Inventory"; (2) Ann Teeter's handwritten notes on page one of the Equipment List indicated that the machinery and equipment is all owned by Brokerage and used in its business; (3) a March 3, 1993 Small Business Administration Listing of Collateral Documents (the "Collateral List") indicates that when Elizabeth A. Higgins of the SBA received the SBA Loan closing documents on March 3, 1993, they included the Security Agreement "with a list of machinery and equipment attached";<sup>6</sup> (4) the Collateral List in the files of United Mortgage, received from the SBA at the time of the assignment of the SBA Loan, had the Equipment List attached to it; and (5) the Teeter Letter and the Authorization required that Brokerage provide the SBA with a list of machinery and equipment.

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<sup>6</sup> The Collateral List was admitted as Exhibit "BB" at trial.

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However, there are simply too many gaps in this evidence which prevent United Mortgage from meeting its burden to prove that there was a false misrepresentation, including that: (1) pages one and two of the Equipment List referred to machinery and equipment "inventory," which raises the question of whether the List represents a physical inventory of machinery and equipment owned by the business, or whether it is machinery and equipment that the business, as a broker, had available for sale to third parties, but which was not owned by the business; (2) pages one and two of the Equipment List did not comply with the conditions for disbursement set forth in Item 10 of the Authorization; (3) the Equipment List is not referred to in the Security Agreement as being attached and Ann Teeter testified that it was not her practice, as an SBA closing attorney, to attach equipment lists to security agreements; (4) Ann Teeter had no recollection of the SBA Loan closing, specifically as to: (a) when she may have made her handwritten notes on page one of the Equipment List; (b) whether Brill or Jeanann Brill made any representations to her that formed the basis of her notes on page one of the Equipment List; or (c) whether the Equipment List was attached to the Security Agreement at the time of the SBA Loan closing; (5) neither Ann Teeter nor Brian Quailey knew

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where the Equipment List came from or specifically whether it was prepared or delivered to the SBA by Brill or Jeanann Brill; (6) James J. Christofaro ("Christofaro"), the Branch Manager of the SBA who signed the Authorization on behalf of the SBA, was not produced by United Mortgage to testify at trial as to whether any representations were ever made to him by either Brill or Jeanann Brill as to the ownership by Brokerage of any of the items of machinery and equipment on pages one and two of the Equipment List; and (7) Brian Quailey did not testify that any representations were made to him by Brill or Jeanann Brill as to the ownership of any of the items of machinery or equipment that are set forth on pages one and two of the Equipment List.

Although United Mortgage would have the Court fill in the gaps in its evidence so the Court could make the determination that there has been a false representation by Brill or Jeanann Brill as to the machinery and equipment owned by Brokerage, it is not the Court's burden or place to speculate on or fill in that missing evidence. That evidence should have been supplied by the SBA Loan documentation and the testimony of Ann Teeter, Brian Quailey or Christofaro, the representatives of the SBA who were involved with the SBA Loan and the SBA Loan closing.

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With respect to the issue of actual and justifiable reliance, it is clear that the SBA intended and relied on the fact that all of the machinery and equipment owned by Brokerage would serve as collateral for the SBA Loan. However, United Mortgage has failed to meet its burden to prove by a preponderance of the evidence that the items of machinery and equipment set forth on pages one and two of the Equipment List, which Brill has now asserted were not all owned by Brokerage at the time of the SBA Loan closing, or thereafter, was property that the SBA relied on as being owned by Brokerage in making and closing the SBA Loan. As discussed above, the machinery and equipment in question was not the type of machinery and equipment that was used by Brokerage in the operation of its business, so why would such machinery and equipment be owned by Brokerage? Furthermore, there is nothing in the Authorization which indicates that the value of the machinery and equipment which Brill was to ensure had been contributed to Brokerage was to exceed \$110,000.00, and that value was satisfied by the Equipment on Hand set forth on page three of the Equipment List, which was the kind of machinery and equipment that Brokerage did use in the operation of its business.

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Further, in this regard, a balance sheet for Selectronics Brokerage, Inc. as of August 31, 1992 (the "Balance Sheet"),<sup>7</sup> approximately six months before the SBA Loan closing, indicates that Brokerage owned net fixed assets with a value of only \$85,684.00, whereas the disputed items of machinery and equipment set forth on pages one and two of the Equipment List are alleged by United Mortgage to have a value of approximately \$300,000.00.

Other than the fact that the SBA was relying on having a security interest in all of the machinery and equipment owned by Brokerage as collateral for the SBA Loan, there has been insufficient evidence presented for the Court to conclude that Brian Quailey, Ann Teeter or Christofaro, representatives of the SBA involved with the SBA Loan and its closing, actually or justifiably relied on the fact that the disputed machinery and equipment was owned by Brokerage as a condition for the making or closing of the SBA Loan.

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<sup>7</sup> The Balance Sheet was admitted as Exhibit "DD" at trial.

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CONCLUSION

The obligations of Brill and Jeanann Brill to United Mortgage, as guarantors of the SBA Loan, are dischargeable. This Decision & Order is not, in any way, a determination as to the ownership of the items of machinery and equipment set forth on pages one and two of the Equipment List.

IT IS SO ORDERED.

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HON. JOHN C. NINFO, II  
CHIEF U.S. BANKRUPTCY JUDGE

Dated: October 22, 2002